IN THE HIGH COURT OF JUDICATURE AT BOMBAY
SIDE JURISDICTION
CRIMINAL REVISION APPLICATION NO.245 OF 1997

Suresh K. Jasani
residing at 102, Riviera,
Gandhigram Road, Juhu,
Bombay- 400 049 ...Applicant.

V/s.

1.Mrinal Dyeing & Manufacturing Co. Ltd.
having its registered office at
Plot No.1002/2, ABC, III Phase,
G.I.D.C. Vapi (Gujrat) and Bombay
Office at 2, Jyoti Wire House,
23-A, Shah Ind. Estate, Veera Desai
Road, Andheri (W),
Bombay-400 053.

2. Rajkumar Nahata, Director of Respt.No.1,
residing at 301/401, Excellency-II A
Lokhandwala Complex, Bombay-400 058 and
having office at same place of Respt.No.1,

3. Ashok Kumar Nahata, Director of Respt.
No.1 residing at 301/401, Excellency II A
Lokhandwala Complex, Bombay- 400 058 and
having at same place of Respondent No.1.

4. Prabhudas B. Salla, Director, of
Respt.No.1, residing at B/17,
Shanti Kunj, Dr.S.Radhakrishna Cross
Rd., Andheri (E), Bombay-400 069 and having
office at same place of Respt.No.1.

5. Prabhudas B. Salla, Director, residing at
1/604, Laxmi Apartment, 44/D.P.Cross Road
No.4, Bombay- 400 067 and having office at
same place of Respondent No.1.

6. Nishantraj Nahata, Director, residing at
301/401, Excellency, IIA, Lokhandwala
Complex, Bombay- 400 059 having office
at same place of Respondent No.1.

7. Sudhakar S. Kasture, Director, residing
at A/41, Snehkutir, Amrut Nagar, Chakala,
Andheri (E), Bombay- 400 093 and having
office at same place of Respondent No.1.

8. Smt. Nirmaldevi Nahata, Director of No.1, residing at 301/401, Excellency, II A, Lokhandwala Complex, Bombay-400 059, at having office at same place of Respondent no.1.

9. State of Maharashtra ...Respondents.

Shri R.V.Talasikar, adv. for the Applicant absent.
Smt. M.H.Mhatre, APP for the Respondent/State.

CORAM: J.H.BHATIA, J.
DATE : 13th February, 2007.

ORAL JUDGMENT:

1. This revision application has been filed by the original complainant challenging the order passed by the Metropolitan Magistrate, 44th Court, Andheri quashing the complaint under Section 138 of the Negotiable Instruments Act on the ground that the complainant had not secured leave of the Court as required under Section 446 of the Companies Act after the order of winding up of the company by Gujarat High Court. It may be made clear that this matter is on board since last two weeks but none appeared for the applicant whenever the matter was called out. None was present on 8-2-2007, 9-2-2007 as well as on 12-2-2007.

2. Respondent no.1 is a company which has been wound up as per the order of Gujarat High Court and therefore, liquidator was appointed. Record reveals that notice was served on the official liquidator for

respondent no.1 but nobody has appeared on behalf of the official liquidator. None appeared for respondent nos.2 to 8, who are the original accused. Therefore, without any assistance, I am required to dispose off this matter after going through the record.

3. As per the complaint filed by the complainant/applicant for amounts due, respondent no.1 had issued a cheque for an amount of Rs.9,99,350/- in favour of the complainant/applicant. That cheque was dishonoured in spite of notice served on respondent nos.1 to 8. They did not make any payment. Therefore, the complaint was filed on 16th April 1996. Pending the complaint in Company Writ Petition No.88 of 1996, the Gujarat High Court, by an order dated 18th September, 1996, directed the winding up of respondent no.1-company and appointed an official liquidator under Section 448 of the Companies Act. In view of this, the accused persons including respondent nos.2 to 8 filed an application before the learned Magistrate to dismiss the complaint as proceeding in complaint under Section 138 of the Negotiable Instruments Act could not be continued as the complainant had not obtained leave from Gujarat High Court as required under Section 446(1) of the Companies Act. Application was opposed by the present applicant. However, the learned Metropolitan Magistrate

relying on provisions of Section 446 of the Companies Act and observing that even though the complainant had taken time to seek permission of the Court concerned to continue with the proceeding, no such leave was obtained and therefore, proceeding came to be quashed.

4. Section 446(1) of the Companies Act reads as follows:

> "When a winding up order has been made or the Official Liquidator has been appointed as provisional liquidator, no suit or **other legal proceeding** shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, against the company, except by leave of the Court and subject to such terms as the Court may impose."
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> *(emphasis supplied)*

From the language of Section 446(1), it is clear that when the winding up order has been made or the official liquidator has been appointed as provisional liquidator, no suit or other legal proceeding shall be commenced or proceeded with, if already pending at the time of winding up of the order against the company, except by leave of the Tribunal. Words "other legal proceeding" have wide connotation conviction and include even the criminal proceeding, which has some relevance with the functioning of the company, particularly about its civil liabilities or contractual liabilities. It is well known that basically the liability of the drawer towards

the payee of the cheque is civil in nature. However, to inculcate confidence in the economy of the nation and the transactions entered into with the help of Negotiable Instruments, particularly the cheques, besides the civil liability, the drawer becomes also liable to be punished under Section 138 of the Negotiable Instruments Act if he fails to make payment within specified period after notice that the cheque has been dishonoured. In the present case, there is no doubt that the liability to make the payment was of the company, i.e., respondent no.1. The cheque was actually issued on behalf of the company, by respondent no.6 as director. In view of the failure of the company to make the payment, in spite of notice after the cheque was dishonoured, the complainant was required to file complaint under Section 138 of the Negotiable Instruments Act. Thus, it is clear that proceeding under Section 138 of the Negotiable Instruments Act arose out of civil liability of the company. Therefore, this may be covered by the words '**other legal proceeding**' within the meaning of Section 446(1) of the Companies Act.

5. There is no dispute that pending the complaint under Section 138 of the Negotiable Instruments Act by an order passed by the Gujarat High Court, respondent

no.1 company was directed to be wound up and the liquidator was appointed. Therefore, in view of provisions of Section 446, no civil suit or other legal proceeding could be continued without leave of the Court, which had passed the order of winding up and had appointed the liquidator. Record reveals that in spite of taking time, the complainant has not secured leave from the Gujarat High Court which had passed the winding up order, to continue with the proceedings under Section 138 of the Negotiable Instruments Act. Therefore, it becomes clear that the matter could not be proceeded with any more after the winding up order. Taking into consideration the above circumstances, it is difficult to find fault with the impugned order passed by the Metropolitan Magistrate.

6. In the result, Revision Application stands dismissed.

(J.H.Bhatia,J.)